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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/699,776	10/30/2000	Mitchell Joseph Alosa Morris	MJAM-1999-002	7022

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EXAMINER	
RUDE, TIMOTHY L	
ART UNIT	**PAPER NUMBER**
2871	

DATE MAILED: 10/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/699,776	MORRIS, MITCHELL JOSEPH ALOSA	
	Examiner	Art Unit	
	Timothy L Rude	2871	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *10 July 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-17 and 20* is/are rejected.

7)☒ Claim(s) *18 and 19* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claims

1. Claims 8 and 15 are amended, and the objection to claim 8 is withdrawn.

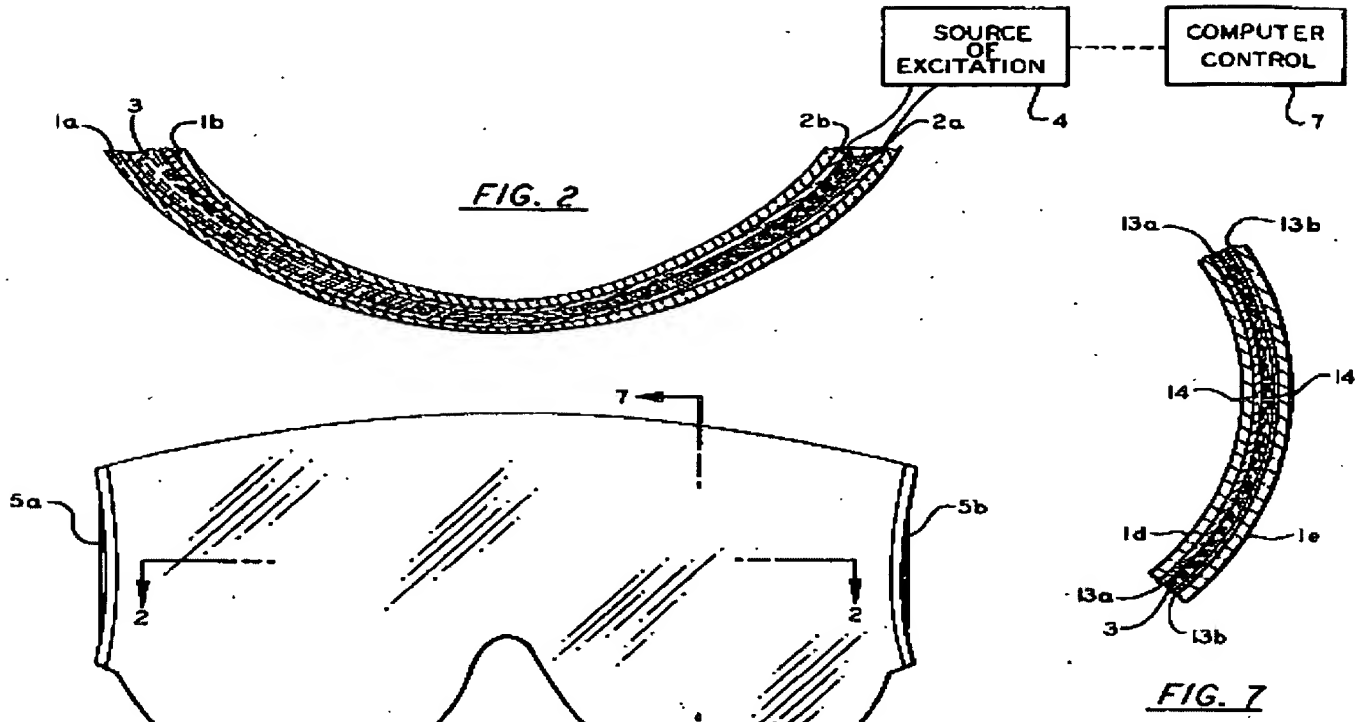
Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 8, 9, 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoyt et al (Hoyt) USPAT 3,942,270.

As to claim 1, Hoyt discloses in Figures 1-7 an eye shade apparatus having a variable transmission comprising: an electo-optic lens, Figure 1; a variable power source, 4 in Figures 2, 4, and 5, for controlling the transmission of said electro-optic lens to have a nonuniform, 2c through 2i in Figure 5, light transmission (col. 4, lines 31-58).



As to claim 2, Hoyt discloses in Figures 1-7 an eye shade apparatus according to claim 1 wherein said electo-optic lens comprises a liquid crystal material, 3 in Figure 2, (col. 3, lines 64-66).

As to claim 3, Hoyt discloses in Figures 1-7 an eye shade apparatus according to claim 1 wherein said electo-optic lens comprises p-methox-ybenylidine-p-n-butylaniline (Applicant's electo-optically active crystals) (col. 3, lines 64-66).

As to claim 8, Hoyt discloses in Figures 1-7 an eye shade apparatus according to claim 1 wherein said electro-optic lens comprises a plurality of regions, 2c through 2i, said variable power source comprises a plurality of power outputs (lines from selection matrix, 11) each of said plurality of power outputs corresponds to at least one of said plurality or regions (per Figure 5).

As to claim 9, Hoyt discloses in Figures 1-7 an eye shade apparatus according to claim 8 wherein the power applied to each of said plurality of regions can be the same (Abstract, simulate total black-out) or different (Abstract, simulate loss of peripheral vision).

As to claim 13, Hoyt discloses in Figures 1-7 an eye shade apparatus according to claim 8, further comprising a computer or a mechanically programmed selection matrix provided as a means of controlling the magnitude and application sites of excitation (Applicant's electronic storage medium storing a plurality of power patterns for applying to said plurality of power outputs and a switch for selecting said plurality of power patterns) for controlling the variable optical media (VOM).

As to claim 14, Hoyt discloses in Figures 1-7 an eye shade apparatus according to claim 1, wherein said electro-optic lens has variable color (col. 2, lines 58-65).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 4-7, 10-12, 16, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoyt, as applied to claims 1 and 8, in view of Grupp USPAT 5,608,567.

As to claims 4 and 10, Hoyt discloses the eye shade apparatus according to claim 1 and according to claim 8.

Hoyt does not explicitly disclose a variable power source comprising a manual control to vary said power source.

Grupp teaches in Figures 1 and 2 a liquid crystal (col. 3, lines 23-26) eye shade apparatus with a voltage generating means, 18, with manual control (Abstract) to vary the transmission of the cell, 4, to protect the eyes.

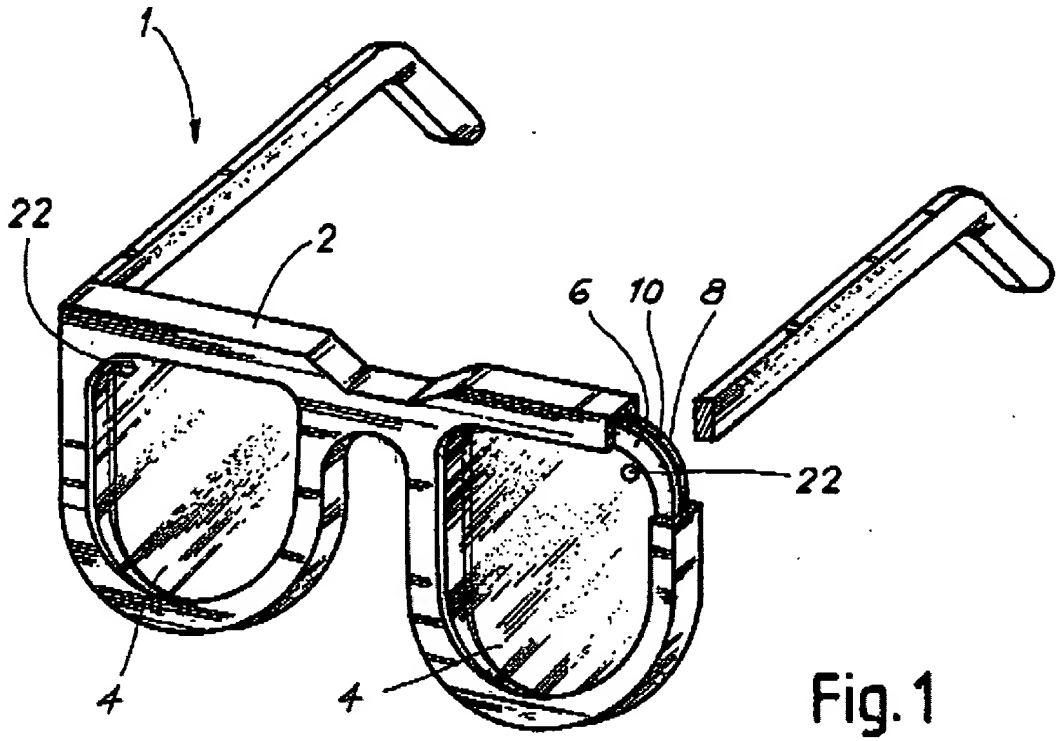


Fig. 1

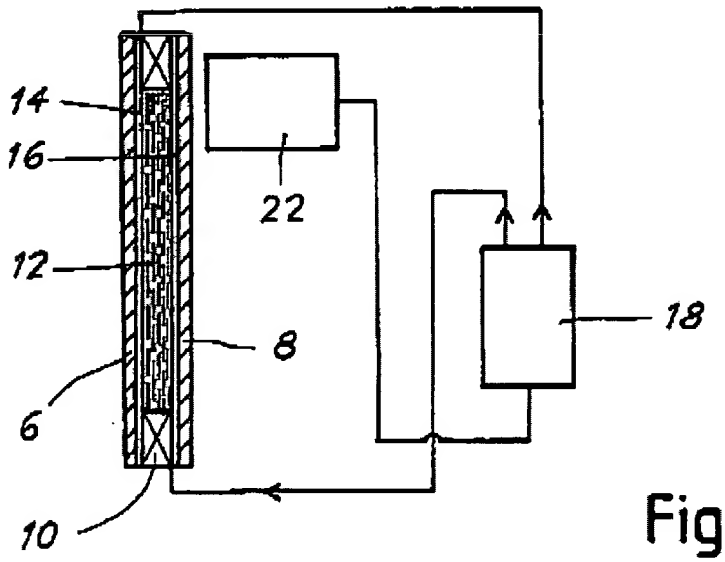


Fig. 2

Grupp is evidence that ordinary workers in the art of liquid crystals would find the reason, suggestion, or motivation to add manual control to vary light transmission protect the eyes.

Therefore, it would have been obvious to one having ordinary skill in the art of liquid crystals at the time the invention was made to modify the eye shade of Hoyt with the manual control of Grupp.

As to claims 5, 11, 16, 17, and 20, Hoyt discloses the eye shade device according to claim 1.

Hoyt does not explicitly disclose a variable power source comprising a photosensitive control to vary said power source in response to the intensity of light incident on said eye shade device.

Grupp teaches in Figures 1 and 2 a liquid crystal (col. 3, lines 23-26) eye shade apparatus with a voltage generating means, 18, with one or several photosensitive sensors, 22, (col. 3, lines 39-53) to automatically control the transmission of the cell, 4, to protect the eyes (Abstract).

Grupp is evidence that ordinary workers in the art of liquid crystals would find the reason, suggestion, or motivation to add photosensitive control to automatically vary light transmission to protect the eyes.

Therefore, it would have been obvious to one having ordinary skill in the art of liquid crystals at the time the invention was made to modify the eye shade of Hoyt with the photosensitive control of Grupp.

As to claims 6 and 12, Hoyt discloses the eye shade apparatus according to claim 1.

Hoyt does not explicitly disclose a manual mode of operation wherein said variable voltage source comprises a manual control to vary said power source and an automatic mode of operation wherein said power source comprises a photosensitive control to vary said power source in response to the intensity of light incident on said eye shade device and a switch permitting selection of said manual mode of operation or said automatic mode of operation.

Grupp teaches as prior art the use of a cut-out switch (col. 1, lines 55-61) to manually versus automatically control the shade. Furthermore, Grupp teaches the use of automatic and manual control (Abstract) which would most commonly entail the use of a switch to select manual versus automatic mode (as well as power off). Also, the use of a switch to select operating modes and to turn the device off is considered an obvious expedient to control the device.

Grupp is evidence that ordinary workers in the art of liquid crystals would find the reason, suggestion, or motivation to add a switch to select manual versus automatic mode. Motivational advantages include easy mode selection, battery conservation (power off), and manual override.

Therefore, it would have been obvious to one having ordinary skill in the art of liquid crystals at the time the invention was made to modify the eye shade of Hoyt with the switch of Grupp.

As to claim 7, Hoyt discloses the eye shade apparatus according to claim 1.

Hoyt does not explicitly disclose an electro-optic lens comprising one region, the transmission of which is controlled by said variable power source.

Grupp teaches in Figures 1 and 2 a liquid crystal (col. 3, lines 23-26) eye shade apparatus with a voltage generating means, 18, with a photosensitive control, 22, (col. 3, lines 39-53) to automatically vary the transmission of the cell, 4, comprising one region (col. 3, lines 11-38) to protect the eyes (Abstract).

Grupp is evidence that ordinary workers in the art of liquid crystals would find the reason, suggestion, or motivation to add an electro-optic lens comprising one region to protect the eyes.

Therefore, it would have been obvious to one having ordinary skill in the art of liquid crystals at the time the invention was made to modify the eye shade of Hoyt with the one region lenses of Grupp.

4. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoyt in view of Grupp as applied to claims 1 and 17 and further in view of Witt USPAT 4,106,217.

As to claim 15, Hoyt discloses an eye shade apparatus according to claim 1.

Hoyt does not explicitly disclose an eye shade apparatus comprising a first and a second lens adapted for shading a first and second eye of (Applicant's or) a user and a first and second side lens.

Witt teaches in Figures 2 and 3, an eye shade apparatus comprising a first and a second lens, 17, adapted for shading a first and second eye of a user and a first and second side lens, 23, to simulate flight through particular weather and cloud conditions (Abstract).

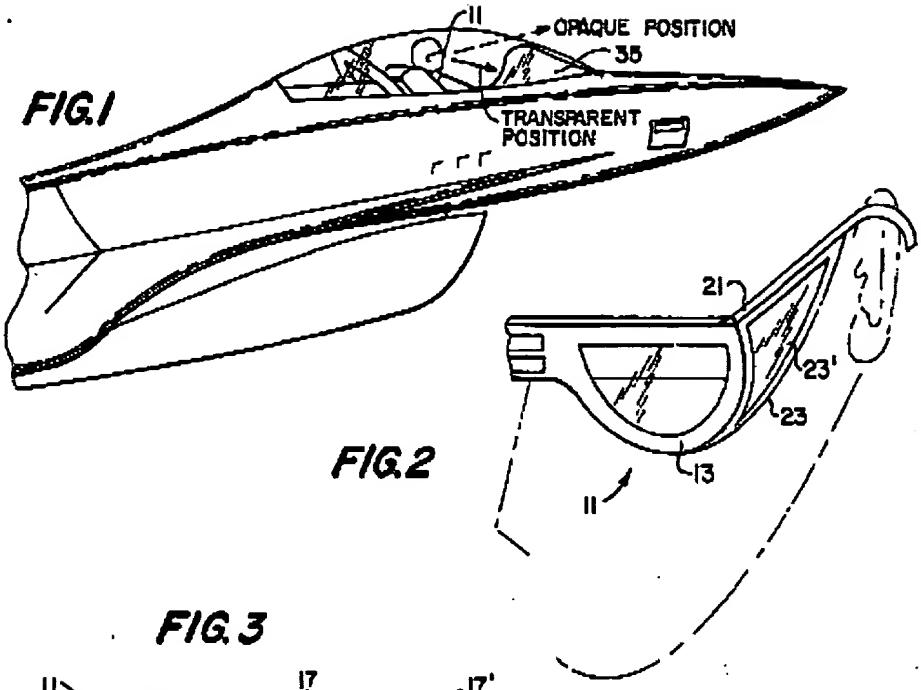
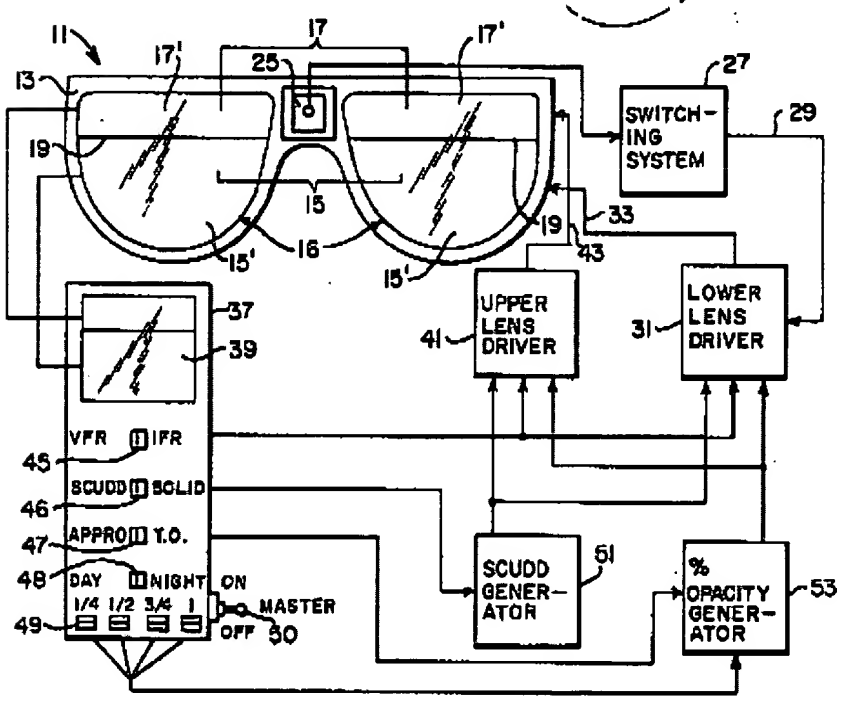


FIG.1

FIG.2

FIG.3



Witt is evidence that ordinary workers in the art of liquid crystals would find the reason, suggestion, or motivation to add an eye shade apparatus comprising a first and

a second lens adapted for shading a first and second eye of a user and a first and second side lens to simulate flight through particular weather and cloud conditions.

Therefore, it would have been obvious to one having ordinary skill in the art of liquid crystals at the time the invention was made to modify the eye shade of Hoyt with the first and a second lens adapted for shading a first and second eye of a user and a first and second side lens of Grupp.

Allowable Subject Matter

5. Claims 18 and 19 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

As to claim 18, prior art of record did not disclose, alone or in combination, the eye shade apparatus according to 1, wherein said apparatus comprises four electro-optic lenses which comprises two side lenses and two forward lenses, *and four photosensitive regions, one for each of said four electro-optic lenses.* The closest reference is Hoyt, but Hoyt does not disclose the claimed recitations

As to claim 19, prior art of record did not disclose, alone or in combination, the eye shade apparatus according to claim 17, further including a processor *to determine*

said nonuniform light transmission from responses of said photosensitive regions. The closest reference is Hoyt, but Hoyt does not disclose the claimed recitations

Response to Arguments

6. Applicant's arguments filed on 10 July 2002 have been fully considered but they are not persuasive.

Applicant's ONLY arguments are as follows:

(1) Hoyt discloses a flight helmet for simulating tunnel vision rather than an eye shade apparatus having variable transmission that is nonuniform.

(2) The nonuniform transmission plots of the claimed invention can have any shape as opposed to a regular pattern of transmission.

(3) Applicant's Figure 9 shows a two dimensional matrix of electrodes capable of providing nonuniform light transmitivity.

(4) The other applied references do not overcome the deficiency of Hoyt.

Examiner's responses to Applicant's ONLY arguments are as follows:

(1) It is respectfully pointed out that Hoyt discloses a flight helmet for simulating tunnel vision by establishing a progressively changing (Applicant's variable) gradient in the optical transmission characteristic (Applicant's nonuniform transmission) per rejections above. See also col. 4, lines 31-58 and col. 10, lines 32-37. The structure

and performance of the invention of Hoyt reads on the claimed invention. Accordingly, Examiner maintains the rejections as proper.

(2) It is respectfully pointed out that although the nonuniform transmission plots of the claimed invention can have any shape as opposed to a regular pattern of transmission, the claims fail to be so narrow. The claims merely require nonuniformity, and Hoyt's gradient provides nonuniform transmission across the field of view.

(3) It is respectfully pointed out that Examiner does not dispute that Applicant's Figure 9 shows a two dimensional matrix of electrodes capable of providing nonuniform light transmitivity. Examiner maintains the invention of Hoyt uses multiple electrodes to provide nonuniform light transmitivity per rejections above.

(4) It is respectfully pointed out that he other applied references are not applied to overcome any deficiency of Hoyt regarding the rejection of claims 1-3, 8, 9, 13, and 14. They are merely applied to address the subject matter of the dependant claims.

Conclusion

References cited but not applied are relevant to the instant application.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L Rude whose telephone number is (703) 305-0418. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William L Sikes can be reached on (703) 308-4842. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7724 for regular communications and (703) 308-7725 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4900.

Timothy L Rude
Examiner
Art Unit 2871

TLR
October 10, 2002

TOAN TON
PRIMARY EXAMINER

PRIMARY EXAMINER